

REMARKS

I. INTRODUCTION

Favorable reconsideration of this application, in light of the present amendments and following discussion, is respectfully requested.

II. STATUS OF THE CLAIMS

Claims 1-8 and 10 are pending; Claim 1 is amended; Claim 9 is cancelled; and Claim 10 is newly added. As support for Claim 10 may be found, for example, in the specification at page 3, it is respectfully submitted that no new matter is added by this amendment.

III. SUMMARY OF THE OFFICE ACTION

In the outstanding Office Action, Claim 9 was rejected under 35 U.S.C. § 102(b) as anticipated by *Lorber* (U.S. Patent No. 3,357,395). Claims 1-7 were rejected under 35 U.S.C. § 103 as unpatentable over *Gebhard* (U.S. Patent No. 5,186,563). Claim 8 was indicated as allowed.

IV. ARGUMENT

A. Allowable Subject Matter

Applicant acknowledges with appreciation the indication that Claim 8 contains allowable subject matter. Because Claim 8 has not been amended herewith, it is respectfully submitted that Claim 8 remains in condition for allowance.

B. Rejection Under 35 U.S.C. § 102(b)

In the outstanding Office Action, Claim 9 was rejected as anticipated by *Lorber*. Claim 9 has been cancelled herewith, thereby obviating this rejection.

C. Rejection Under 35 U.S.C. § 103

Claims 1-7 stand rejected under 35 U.S.C. §103 as obvious in view of *Gebhard*. For the reasons discussed below, this rejection is respectfully traversed.

Independent Claim 1,¹ from which Claims 2-7 and 10 depend, recites, in part:

A fluid dispenser ... wherein the mean thickness of the webs is between 0.4 and 1.50mm, the height of the dispenser is between 55 and 85mm and the weight of the dispenser is between 10 and 17.5 grams.

As described in the specification at page 3, lines 4-10:

Applicant has established that by ensuring that the thickness of the outer fold-lines is less than that of the inner fold-lines, the bellows is enabled to collapse more readily when subjected to hand pressure. Also, the increased thickness of the inner fold-lines provides for the bellows the required resilience which enables it to return close to its original size once hand pressure is released. This feature ensures that the reservoir is retained in a useful and usable form.

The outstanding Office Action admits at page 3 that *Gebhard* does not disclose or suggest these features. However, the outstanding Office Action alleges that these claimed features are merely a matter of design choice.

At the outset, as explained in MPEP § 2143.03, all of the claimed features must be present in the applied reference or references to provide a *prima facie* case of obviousness. Since the outstanding Office Action admits that several of the features recited in independent Claim 1 are not found in the applied reference, it appears that the outstanding Office Action is rejecting Claims 1-7 based upon the impermissible “obvious to try rationale.”

As set forth in MPEP § 2145, a rejection based on the “obvious to try rationale” is improper where “what would have been ‘obvious to try’ would have been to vary all parameters

¹ Claim 1 has been amended to address minor typographical informalities, and it is respectfully submitted that no new matter is added by this amendment.

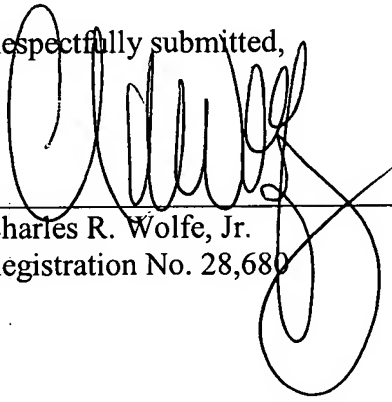
or to try each of numerous possible choices until one possibly arrived at a successful result, where the prior art gave either no indication of which parameters were critical or no direction as to which of many possible choices is likely to be successful.”

In this case, there is no evidence that *Gebhard* or any other reference would provide the requisite direction to the inventors to develop the claimed invention. Certainly, the outstanding Office Action has not cited to any teachings in *Gebhard* to provide such motivation. Without such support in *Gebhard*, it is respectfully submitted that the outstanding Office Action has failed to provide a *prima facie* case of obviousness. It is therefore respectfully requested that this rejection be withdrawn.

V. Conclusion

Consequently, in view of the present amendments and foregoing discussion, it is respectfully submitted that this application is in condition for allowance. An early and favorable action is therefore respectfully requested.

Respectfully submitted,



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